constitute the weight of authority and they certainly accord with the common law. On the other hand it has been held that a widow entitled to dower, becomes, immediately upon the death of her husband, tenant in common with his heirs, and remains such until assignment of dower. *Steadman* v. *Fortune,* 5 Conn. 462. The following cases hold that the widow has the right to remain in possession as against the heirs: *Robinson* v. *Miller,* 40 Ky. 88; *Gourley* v. *Kinley,* 66 Pa. St. 270; *Gorham* v. *Daniels,* 23 Vt. 600; *McReynolds* v. *Counts,* 9 Grat. (Va.) 242. Some courts hold that the widow has the right to enjoy the mansion house of her deceased husband, and the messuages and plantations thereunto annexed until assignment of dower. *Roberts* v. *Nelson,* 86 Mo. 21; *Caillaret* v. *Bernard,* 15 Miss. 319; *Smallwood* v. *Bilderback,* 16 N. J. Eq. 497.

EMINENT DOMAIN—INTERURBAN RAILWAYS.—The petitioner, an interurban electric railroad company, commenced proceedings to condemn land for a right of way within the villages of Tonka Bay and Excelsior. Title 1, c. 34, Gen. St., 1894, provides for the incorporation of such companies "for works of internal improvement," and confers the right of eminent domain. The company was organized under title 2, which gives no such power. *Held,* that the incorporators in fact complied with the provisions of title 1, that the company was a commercial rather than a street railway, a public service corporation, possessing the right of eminent domain. *In re Minneapolis and St. P. Suburban Ry. Co.; Minneapolis and St. P. Suburban Ry. Co.* v. *Manitou Forest Syndicate et al.* (1907), — Minn. —, 112 N. W. Rep. 13.

The decision is in entire accord with the attitude of the Minnesota courts toward interurban electric roads. *Carli* v. *Stillwater, etc., Tr. Co.,* 28 Minn. 373; *Funk* v. *St. P. C. Ry. Co.,* 61 Minn. 435; *State* v. *Duluth St. Ry. Co.,* 76 Minn. 96. Steam railroads have had little trouble in securing the right of condemning property. Street railroads do not have this power inherently nor is it readily granted to them. *Hartshorne* v. *Ill. Valley Tr. Co.,* 210 Ill. 609; *State ex rel Roebling* v. *Trenton Pass. R. Co.,* 58 N. J. L. 666; *Thompson, etc, Co.* v. *Simon,* 20 Ore. 60; *Lange* v. *La Crosse and E. R. Co.,* 118 Wis. 558. And when granted the statute is strictly construed. *In re S. B. R. Co.,* 119 N. Y. 141; *In re Minneapolis, etc., R. Co.,* 76 Minn. 302; *Chicago and N. W. Ry. Co.* v. *Oshkosh, etc., R. Co.,* 107 Wis. 192. The question is whether the interurban line is a commercial road, like the steam railway, or is only a development of the street railway. If the former, since it must bear the burden of the steam carrier, it should have the rights of the public service corporation. The distinction between the commercial road and the street railway does not depend upon the motive power, nor, necessarily, upon the fact that passengers alone are carried. The entire nature and extent of the business must be considered. *Harvey* v. *Railway,* 174 Ill. 295; *Eichels* v. *Evansville, etc., Co.,* 78 Ind. 261; *Diebold* v. *Kentucky Tr. Co.,* 117 Ky. 146; *Briggs* v. *Lewiston, etc., R. Co.,* 79 Me. 363; *Hannah* v. *St. Ry. Co.,* 81 Mo. App. 78; *South Bound R. Co.,* v. *Burton,* 67 S. C. 515; *Rische* v. *Texas Trans. Co.,* 27 Tex. Civ. App. 33; *Malott* v. *Collinsville, etc., Co.,* 108 Fed. Rep. 313, 318. Decisions upon the exact point involved in the principal case

are not numerous. Oregon has denied the power to its suburban roads. *Thompson, etc., Co.* v. *Simon,* 20 Ore. 60. In Illinois, Ohio, Pennsylvania, Wisconsin and, under certain circumstances, in Michigan, interurban roads have been held to be commercial roads and an increased servitude upon the highways. It is fair to presume that in those states, a statute similar to the Minnesota act would confer the right of eminent domain upon such lines. On the question of servitude see VI MICHIGAN LAW REVIEW, 84.

EVIDENCE—PRESUMPTION AS TO FOREIGN LAW.—Plaintiff brought suit in Alabama for damages for personal injury committed in Florida. At the trial the Florida law was not averred or proved. *Held:* The law of Alabama would be applied. (HARALSON and ANDERSON, JJ., dissent.—That Florida not being a common law state, an Alabama court could not presume that the Florida law was the same as the common law of Alabama; that the rule that the law of the forum would be applied on actions arising in other states, not having the common law, when the foreign law is not brought before the court, is a rule that will be applied in Alabama only to the enforcement of contracts.) *Watford* v. *Alabama & Florida Lumber Co.* (1907), — Ala. —, 44 So. Rep. 567.

There are two lines of holdings in regard to the application of the law of the forum in actions arising in other states having as the basis of their legal system the common law on failure of averment or proof of foreign law. One line holds that even the statutory law of the forum will be applied. The other line holds that only the common law will be applied; WIGMORE, EVIDENCE, § 2536 and cases therein cited. Alabama follows the latter line; *Louisville & N. R. Ry. Co.* v. *Williams,* 113 Ala. 402. In the principal case it is stated that the majority are of opinion that "The complaint is framed under the *common law,* which prevails in this state; and the question should, therefore, be dealt with under the Alabama law." Judging from this statement and from the law of Alabama, as laid down in the before mentioned case of *Louisville & N. Ry. Co.* v. *Williams,* one might infer that the majority of the court considers Florida a common law state. But another statement in the same paragraph leads to the opposite inference: "In the absence of averment and proof of the laws of Florida, the parties by invoking the jurisdiction of the Alabama court *submit* themselves to the laws of this state." When a cause of action arises in a foreign jurisdiction which does not have the common law, and the parties do not aver or prove the foreign law, the presumption is conclusive that the parties *submit* to the law of the forum. But in cases where the foreign state has the common law, the presumption is, not that the parties submit to be tried by the law of the forum, but that the foreign law is the same as the law of the forum. The minority opinion is very plain in expressing the view that Florida is not a common law state, which view, in the light of history, would seem to be entirely correct and is supported by many analogous cases; e. g. *Peet & Co.* v. *Hatcher,* 112 Ala. 514, held that the law of Louisiana would not be presumed to be the same as the law of Alabama, because Louisiana was not a